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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,827	07/03/2003	Kate E. Nordland	47097-01251USPT	6795
28763	7590	03/04/2005	EXAMINER	
WINSTON & STRAWN PATENT DEPT 1400 L STREET NW WASHINGTON, DC 20005-3502			NGO, LIEN M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,827

Applicant(s)

NORDLAND ET AL.

Examiner

LIEN TM NGO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11, 14-18 and 33-54 is/are pending in the application.
- 4a) Of the above claim(s) 33-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 14-18 and 44-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "ventable are is formed in the second sidewall" (claim 44), "a plurality of compartments", "as least one ventable area aligned with at least one of the plurality of compartments" (claim 53), and "at least one ventable are is aligned with each compartment" (claim 54) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-9, 11, 14-18, and 44-54 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 1, "a second interruption spaced substantially from the first interruption" is not supported in the specification.

In claim 44, "at least one ventable area is formed in the second side wall" is not supported in the specification.

In claims 53 and 54, "as least one ventable area aligned with at least one of the plurality of compartments" (claim 53), and "at least one ventable are is aligned with each compartment" (claim 54) are not supported in the specification.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-9, 11, 14-18, and 44-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is unclear what is required a cut including a first interruption and a second interruption.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, 11, 14, 16-18, 45, 46, 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Commisso (3,955,710). Commisso discloses, in figs.1-3, a venting container made from a polymeric foam, a lid having ventable areas 16 formed by perforation cuts (see col. 1, lines 30-31, and col. 2, lines 20-22).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 11, 14, 16-18 and 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Commisso in view van Melle (5,613,619).

To the degree it can be argued that the second interruption of the ventable area cut is an unthrough cut on the lid, wherein the cut has a depth less than the thickness of the lid. It is well known in the art to form a frangible portion by

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stamped out process to form an unthrough cut, as taught by Van Melle in col. 3, lines 1-5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ventable area in Commisso with unthrough cut by stamped out process in order to ensure the material of the lid will fracture in the appropriate place.

In regard to claims 48-50, it would have been obvious to one having ordinary skill in the art at the time the invention was made to made the cut having the a depth as claimed, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980)

5. Claims 1-9, 11, 14-18 and 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al. (3,851,789) in view of Commisso and van Melle. Case discloses, in figs 1 and 7 a polymeric foam container having a base, a lid and a hinged, and the lid being releasably latched to the base.

Case does not disclose the lid comprising ventable areas as claimed.

Commisso in view of van Melle teaches polymeric foam container having a lid including ventable areas as claimed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Case lid with ventable areas as claimed, as taught by Commisso in view of van Melle, in order to provide ventilation and finger holes for the container.

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6. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Commisso in view of van Melle and further in view of Vadney (5,947,321).

Commisso et al. in view of van Melle does not teach the ventable area formed in the lid sidewall.

Vadney teaches a ventable area formed in a lid sidewall.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to make the ventable area in Commisso in view of van Melle in the lid sidewall, as taught by Vadney, in order to have the air vent in the sidewall of the lid.

7. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al. in view of Commisso and van Melle and further in view of Terauds (4,535,889) or Vadney (5,947,321).

Case et al. in view of Commisso and van Melle does not disclose the ventable area disposed in at least one corner of the lid.

Terauds (fig. 1) or Vadney (fig.1) teaches a ventable area disposed in at least one corner of a lid.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the ventable area in the lid of Case et al. in view of Commisso and van Melle being disposed in at least one corner of the lid, as taught by Terauds or Vadney, in order to facilitate the venting of the lid.

8. Claim 53 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Case et al in view of Commisso and van Melle and further in view of Rider, Jr. (5,906,191)

Case et al. in view of Commisso and van Melle does not disclose the container comprising a plurality of compartments.

Rider teaches a container having a plurality of compartments.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container in Case et al. in view of Commisso and van Melle having a plurality of compartments, as taught by Rider, in order to store different food in separate compartments.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-9, 11-18, and 44-54 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3727

March 2, 2005

